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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 170901861-8524-02]

RIN 0648-BH08

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Biennial Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule implements annual harvest specifications and management measures to establish allowable catch levels for Pacific mackerel for the fishing years 2017-2018 and 2018-2019. The harvest guideline (HG) and annual catch target (ACT) for the 2017-2018 fishing year are 26,293 metric tons (mt) and 25,293 mt, respectively. The HG and ACT for the 2018-2019 fishing year are 23,840 mt and 22,840 mt, respectively. The ACT serves as the primary directed commercial harvest quotas. If the fishery attains the ACT in either fishing year, the directed fishery will close, reserving the difference between the HG and ACT as a 1,000 mt set-aside for incidental landings in other fisheries. If the HG is reached, all retention would be prohibited through the end of the fishing year. This rule is intended to conserve and manage the Pacific mackerel stock off the U.S. West Coast.

DATES: Effective *[insert date 30 days after date of publication in the FEDERAL REGISTER]* through June 30, 2019.

ADDRESSES: Copies of the report, “Pacific Mackerel Biomass Projection Estimate for USA Management in 2017-2018 and 2018-2019” may be obtained from the West Coast Regional Office 501 W. Ocean Blvd., Ste. 4200, Long Beach, CA 90802-4250.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, West Coast Region, NMFS, (562) 980-4034.

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, NMFS manages the Pacific mackerel fishery in the U.S. Exclusive Economic Zone off the West Coast in accordance with the Coastal Pelagic Species (CSP) Fishery Management Plan (FMP). The CPS FMP and its implementing regulations require NMFS to set annual harvest specifications for the Pacific mackerel fishery based on the annual specification framework and control rules in the FMP. The control rules in the CPS FMP include the HG control rule, which in conjunction with the overfishing limit (OFL) and acceptable biological catch (ABC) rules, are used to manage harvest levels for Pacific mackerel. According to the FMP, the quota for the principal commercial fishery, the HG, is determined using the FMP-specified HG formula. The HG is based, in large part, on the current estimate of stock biomass. The biomass estimate is an explicit part of the various harvest control rules for Pacific mackerel, and as the estimated biomass decreases or increases from one year to the next, the resulting allowable catch levels similarly trend. More information on the Pacific Fishery Management Council’s (Council) process for developing Pacific mackerel harvest specifications and more detail on the HG control rule are provided in the proposed rule for this action (82 FR 56204) and are not repeated here.

The purpose of this final rule is to implement these harvest specifications, which include allowable harvest levels (ACT, HG, annual catch limit (ACL)), as well as annual catch reference

points (OFL and ABC) that take into consideration uncertainty surrounding the current biomass estimates for Pacific mackerel for the 2017-2018 and 2018-2019 fishing years. As described above, the Pacific mackerel HG control rule is the primary mechanism for setting the annual commercial fishery quota, however the Council recommended, and NMFS is implementing, ACTs under the HG that will trigger a closure of directed commercial fishing for Pacific mackerel and incidental harvest provisions. The reason for instituting an ACT and closing directed fishing at the ACT instead of all commercial catch at the HG, is that Pacific mackerel commonly school with other CPS; the 1,000 mt buffer between the ACT and HG would allow for the continued prosecution of these other important CPS fisheries after the ACT for Pacific mackerel is attained. The OFL is the catch level above which overfishing would be occurring and the ABC is set below the OFL to account for scientific uncertainty in the OFL. The ACL can be set equal to or less than the ABC if necessary to ensure overfishing does not occur and serves as the basis to invoke management controls that can prevent the ACL from being exceeded and to correct or mitigate overages of the ACL if they occur, and can be set no higher than the ABC.

The Council recommended, and NMFS is implementing, Pacific mackerel harvest specifications and management measures for both the 2017-2018 and 2018-2019 fishing years. For the 2017-2018 Pacific mackerel fishing year these include an OFL of 30,115 mt, an ABC and ACL of 27,510 mt, a HG of 26,293 mt, and an ACT of 25,293 mt. For the 2018-2019 Pacific mackerel fishing year these include an OFL of 27,662 mt, an ABC and ACL of 25,269 mt, a HG of 23,840 mt, and an ACT of 22,840 mt. The Pacific mackerel fishing season runs from July 1 to June 30. These catch specifications are based on the control rules established in the CPS FMP and biomass estimates of 143,403 mt (2017-2018) and 131,724 mt (2018-2019). These biomass estimates are the result of the NMFS Southwest Fishery Science Center's Pacific mackerel stock

assessment completed in June 2015, and a subsequent catch-only projection estimate completed in June 2017. The Council's Scientific and Statistical Committee approved the biomass estimates from the assessment and catch-only projection estimate as the best available scientific information for management at its June 2017 meeting (see **ADDRESSES**).

Upon the unlikely attainment of the ACT in either fishing year, directed fishing would close, reserving the difference between the HG and ACT (1,000 mt) as a set aside for incidental landings in other fisheries and other sources of mortality. For the remainder of the fishing year, incidental landings would be constrained to a 45-percent incidental catch allowance when Pacific mackerel are landed with other CPS (in other words, no more than 45 percent by weight of the CPS landed per trip may be Pacific mackerel) or up to 3 mt of Pacific mackerel could be landed incidentally in non-CPS fisheries.¹ Upon attainment or projected attainment of the HG, no retention of Pacific mackerel would be allowed even as incidental catch. Limited incidental landing of Pacific mackerel in other fisheries, particularly other CPS fisheries, is necessary when the directed fishery is closed to reduce potential discarding of Pacific mackerel and allow for continued prosecution of other important stocks that may school with Pacific mackerel.

The NMFS West Coast Regional Administrator will publish a notice in the **Federal Register** announcing the date of any closure of either: 1) directed fishing, when harvest levels near or attain the ACT; or 2) retention, including by incidental fishing, when harvest levels near or attain the HG. Additionally, to ensure the regulated community is informed of closures, NMFS will make announcements through all other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies. This rule would also add paragraph (p) to the prohibitions section at 50 CFR 660.505 referencing the prohibition on

¹ The following directed fisheries would be allowed to continue: (i) fishing for live bait and (ii) minor directed fishing (after March 16, 2018) until the HG is taken, provided the amount retained does not exceed 1 mt per day per vessel or person, and which is limited to 1 fishing trip per day by any vessel.

retention, possession, or landing of Pacific mackerel for the remainder of the year after the closure date specified in the **Federal Register** notice published by the Regional Administrator.

On November 28, 2017, a proposed rule was published in the **Federal Register** (82 FR 56204) soliciting public comments through December 28, 2017. NMFS did not receive any relevant public comments on the proposed rule.

In the **SUMMARY** section of the proposed rule only, NMFS mistakenly stated that the 1,000-mt set aside would be reserved “for incidental landings in other CPS fisheries and other sources of mortality.” In fact, as stated in the rest of the proposed rule and throughout this rule, the 1,000-mt set aside is reserved for incidental landings in other fisheries (not just CPS fisheries) and other sources of mortality.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 18, 2018.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660--FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

2. In § 660.505, add a new paragraph (p) to read as follows:

§ 660.505 Prohibitions.

* * * * *

(p) Retain, possess or land Pacific mackerel after an announcement under § 660.511(j) that the harvest guideline has been taken or is projected to be reached soon.

3. In § 660.511, add paragraphs (i) and (j) to read as follows:

§ 660.511 Catch restrictions.

* * * * *

(i) The following harvest specifications apply for Pacific mackerel:

(1) For the Pacific mackerel fishing season July 1, 2017, through June 30, 2018, the harvest guideline is 26,293 mt and the ACT is 25,293 mt;

(2) For the Pacific mackerel fishing season July 1, 2018, through June 30, 2019, the harvest guideline is 23,840 mt and the ACT is 22,840 mt.

(j) When an ACT in paragraph (i) of this section has been reached or is projected to be reached soon, then for the remainder of the Pacific mackerel fishing season, Pacific mackerel may not be targeted and landings of Pacific mackerel may not exceed 45 percent of landings when Pacific mackerel are landed with other CPS (in other words, no more than 45 percent by weight of the CPS landed per trip may be Pacific mackerel), except that up to 3 mt of Pacific mackerel may be landed without landing any other CPS. When a harvest guideline in paragraph (i) of this section has been reached or is projected to be reached soon, no further retention of Pacific mackerel is allowed through the end of the Pacific mackerel fishing season. The Regional Administer shall announce in the *Federal Register* the date that an ACT or the harvest guideline is reached or is expected to be reached, and the date and time that the restrictions described in this paragraph go into effect.

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